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Public Disclosure
Commission

Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

October 9, 2008

Vicki Rippie
Executive Director
Public Disclosure Commission
PO Box 40908
Olympia, WA 98504-0908

RE: **Utter & Ireland Citizen Action Day Letter –
BIAW, BIAW Member Services Corporation and Dino Rossi**

Dear Ms. Rippie:

The Attorney General's Office has received a citizen action letter filed on behalf of former Justices Robert Utter and Faith Ireland by their counsel, Knoll Lowney and Michael Withey. The letter alleges violations of the state campaign finance disclosure laws by the BIAW, BIAW Member Services Corporation and Dino Rossi. It was filed pursuant to RCW 42.17.400(4). As you know, RCW 42.17.400(4) requires action by the State within specific time periods or the citizen may proceed in the name of the State. This letter was received on Monday October 6, 2008 and a copy is attached.

As is customary with these types of matters, the Attorney General is respectfully requesting your agency conduct an investigation into the allegations. We will await the results of your investigation before proceeding further. In the event the Commission determines that it is appropriate to schedule an administrative hearing, please advise. Otherwise, I would request the Commission's recommendation with the report of investigation be forwarded to the Attorney General when it is complete.

I would also like to apprise you that a lawsuit has been filed in King County Superior Court by Justices Utter and Ireland in the name of the State under RCW 42.17.400. I have attached a copy of this complaint. It appears that the issues raised in this second citizen action letter are also the subject of this lawsuit. I have also learned that an ex parte order allowing discovery has been signed. This may complicate the PDC staff's processing of this investigation. I would ask that the staff do their best and if they have any legal issues that arise during their investigation that they feel free to contact me.

Sincerely,

LINDA A. DALTON
Sr. Assistant Attorney General

LAD:nr

Enclosures

cc: Rob McKenna, Attorney General
Jeff Goltz, Deputy Attorney General
Dan Satterberg, King County Prosecuting Attorney
Janice Ellis, Snohomish County Prosecuting Attorney
Ed Holm, Thurston County Prosecuting Attorney

SMITH & LOWNEY, P.L.L.C.

2317 E. JOHN ST.

SEATTLE, WASHINGTON 98122

(206) 860-2976. FAX (206) 860-4187

October 6th, 2008

Robert McKenna
Washington State Attorney General
1125 Washington St SE PO Box 40100
Olympia, WA 98504-0100

Ed Holm
Thurston County Prosecuting Attorney
20000 Lakeridge Drive SW
Olympia, WA 98502

Daniel T. Satterberg
King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Janice Ellis
Snohomish County Prosecuting Attorney
3000 Rockefeller Ave,
Everett, WA 98201

Re: 1st Notice of Intent to Sue Dino Rossi for Violations of RCW 42.17

Dear elected officials:

We represent the following persons and entities ("Notifiers") in submitting this statutory notice of intent to sue:

- Hon. Washington Supreme Court Justice Robert F. Utter (Ret.).
- Hon. Washington Supreme Court Justice Faith Ireland (Ret.).

Notifiers have obtained evidence that strongly suggests, if not proves, that gubernatorial candidate Dino Rossi participated in BLAW's illegal fundraising activities that are the subject of the Attorney General's lawsuit filed on September 19, 2008.

Dino Rossi's participation in BLAW's illegal fundraising violated numerous legal requirements under RCW 42.17. Notifiers hereby give notice that they intend to bring a lawsuit

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against Dino Rossi, under RCW 42.17.400(4), if you do not commence an action against him within the notice periods specified by statute.

A. DINO ROSSI COORDINATED WITH AND PROVIDED FUNDRAISING ASSISTANCE TO BIAW IN RAISING APPROXIMATELY \$3.5 MILLION FOR A POLITICAL COMMITTEE TO PROMOTE HIS RUN FOR GOVERNOR.

On or before May of 2007, Dino Rossi knew of and consented to the BIAW's formation of a political committee to promote his candidacy for governor. In that period, Rossi provided assistance to the BIAW in its fundraising efforts for this political committee.

The Complaint of the Washington Attorney General of Washington against BIAW Member Services Corporation ("BIAW-MS") discusses the BIAW's fundraising efforts:

3.5. BIAW-MS officers personally approached each of BIAW's 15 local builder associations and requested they contribute some or all of their excess unanticipated retro funds to assist with 2008 political campaigns. Those personal visits to the local builder associations occurred between March 7 and July 10, 2007.

3.6 In response to these solicitations by BIAW-MS officers in 2007, eleven of the 15 local builders associations authorized BIAW-MS to retain a portion of their 2007 Retro Program refund to be given as contributions to ChangePAC for use in the 2008 political campaigns.

3.8 Between July 5 and July 23, 2007, BIAW-MS retained \$584,527.53 from the Retro Program refund from eleven of the local builder associations for the purpose of donating the funds to ChangePAC, as needed, for 2008 electoral campaign activities. ...

3.9 From July 2007 until August 21, 2008, these contributions went undisclosed and the public had no way of knowing that these funds were available to ChangePAC as campaign contributions.

Attorney General Complaint ¶¶ 3.5-3.8, *State of Washington v. BIAW-MS* (hereafter Attorney General Complaint") (emphasis added).

Based upon these facts, the Attorney General asserted that BIAW-MS "violated RCW 42.17.120 by concealing its solicitation and receipt of \$584,527.53 in campaign contributions to be used in 2008 electoral activities." *Id.* at ¶ 4.3.

This fundraising effort was conducted for the purpose of amassing a campaign war chest to assist Dino Rossi in his run for governor in 2008, and had the effect of creating a political committee promoting his candidacy. In sworn testimony to the State Public Disclosure Commission, MBA Executive Director Sam Anderson described that "BIAW had made a decision in early '07 that they were going to support Dino Rossi if he ran" and approached local

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groups, including MBA, asking for contributions to a "Fund for Rossi."¹ One donor to this fund wrote "[t]he vote was to allow BIAW to withhold \$10,000 from our current check. ... The enthusiasm over another shot at the governor's office by Dino was unanimously welcomed."²

BIAW's Executive Committee originally discussed building this "Fund for Rossi" in February of 2006:

President Hansell – Dino Rossi Campaign

... There was a collective feeling of support for Dino and Jeff [Hansell] said he felt there was an understanding that Rossi was still BIAW's best chance in 2008 to take back the Governor's House with someone who is friendly to the building community. Hansell said there were numerous comments of commitment to make sure that BIAW move forward to create a strategy and fund. Jeff said that if Dino was not running it would cost BIAW a lot more.³

In June of 2006, the BIAW Board formally created this "Governor's race" fund and voted to place the first \$425,000 into it.⁴ The Board agreed to place the funds into a "Short-term investment account for use in the 08 Governors race" and to create "a category in the budget for the funds".⁵ "[BIAW Treasurer] Brad Spears said the funds would show under the fixed assets in a newly created category called Governor's race."⁶

The \$425,000 was placed in a "special fund ... set up to raise funds for the 2008 gubernatorial race"⁷ The fund more than doubled when BIAW's local affiliates contributed \$584,527.53, as discussed in the Attorney General's complaint.⁸ The BIAW later contributed another \$2 million to this fund.⁹ Minutes of the MBA reported that eventually this "campaign war chest" had grown to "approximately \$3.5 million".¹⁰

¹ PDC Interview of Sam Anderson, at approximately minute 35:29.

² Email from Bill Quehrn to Tom Kwieciak, July 11, 2007.

³ Executive Committee Minutes, Olympia, Feb. 22, 2006 (emphasis added).

⁴ Board Committee Minutes, Spokane, June 16, 2006.

⁵ *Id.*

⁶ Executive Committee Minutes, Spokane, June 16, 2006.

⁷ BIAW EC Mtg. Minutes, June 29, 2007.

⁸ Attorney General BIAW-MSA Complaint ¶3.8.

⁹ MBA Board Minutes, November 19, 2007.

¹⁰ MBA's Chair Officers Meeting Minutes, July 23, 2007.

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Internal documents show that the BIAW treated all of these moneys as a single campaign fund.¹¹

1. Dino Rossi assisted BIAW Officers in soliciting over-limit and illegal contributions for BIAW's campaign war chest.

BIAW's President testified to the Public Disclosure Committee that they had come up with a fundraising "plan" that involved BIAW Senior Officers "visit[ing] each of the local associations to ask them to donate" to their efforts in the 2008 Governor's election.¹² The Attorney General confirmed that BIAW Officers "personally approached each of 15 local builder associations and requested they contribute".¹³ The Attorney General asserts that this fundraising was illegal because BIAW-MSA was soliciting money for its campaign activities but was not registered as a political action committee, and then also failed to report these activities.

Dino Rossi's participation in this illegal fundraising effort is shown by the fact that he coordinated with BIAW Senior Officers in soliciting a \$576,682.22¹⁴ contribution from the MBA.

On April 30, 2007, BIAW President Daimon Doyle attended the MBA's Board Meeting and explained that "senior officers introduced a resolution asking each of the 15 locals to donate the excess retro funds beyond what they budgeted to the gubernatorial fund."¹⁵ He reported that so far 11 out of 15 locals had approved this process.¹⁶ MBA Executive Director Sam Anderson reported that these funds would go to a "Fund for Rossi."¹⁷ The Board decided that Doyle's request would be taken up at the next MBA Board Meeting.¹⁸

In the following three weeks, Dino Rossi himself assisted the BIAW to solicit this contribution. The minutes of MBA's Chair Officers Meeting on May 21, 2007 state:

Doug moved into discussion regarding the request from BIAW to use excess money from the ROII refund to fund the BIAW's war chest. Preliminary numbers on the excess are approximately \$1 50,000 - \$200,000. So far, Pierce and King Snohomish Counties are the only associations who have not made a commitment. Pierce County has had concerns that it is too early and there isn't enough information as to whom they would

¹¹ All of these funds originated as tax refunds earned by employers under the State of Washington's retrospective rating program and were withheld from employers under a provision in the trust agreement which allowed withholding only "for marketing and promotion of the [tax refund] Plan."

¹² Declaration of Daimon Doyle, PDC Case No. 09-007 ¶ 3.

¹³ Attorney General BIAW-MSA Complaint, ¶ 4.3.

¹⁴ Declaration of Sou Chiam, August 15, 2008, submitted to PDC.

¹⁵ MBA Board Minutes, April 30, 2007.

¹⁶ *Id.*

¹⁷ PDC Interview of Sam Anderson, at approximately minute 35:29.

¹⁸ MBA Board Minutes, April 30, 2007.

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support. **Doug, Joe, and John reported that they had received a call from Dino Rossi. John stated that he reiterated the Board's sentiment to Rossi, stating that it was too early, and the association had building issues that needed to be resolved.** Doug indicated that he would call Daimon and let him know that the MBA has taken no action, though it doesn't mean that the board won't take action later. September would be a good time to make a decision.¹⁹

The Board decided to put the decision off until the fall of 2007.²⁰

These meeting minutes indicate that Dino Rossi was aware of the BIAW's illegal fundraising campaign and made personal calls to three of MBA's senior officers while a solicitation was pending. Rossi called then-MBA President Doug Barnes, then-First Vice President Joe Schwab, and then-Second Vice President John Day.

In addition, these minutes reflect the contents of one of these conversations and shows that Dino Rossi specifically discussed whether and when MBA would contribute to the very fundraising drive that the Attorney General claims to have been illegal.

Dino Rossi acknowledged to reporters at the Seattle Post Intelligencer that he made these calls to MBA officers **"for BIAW."** According to the report, **"Rossi did say he had inquired about political contributions in a general sense. ..."** Part of (the discussion) was participation but we never talked about dollar amounts and I never asked them to put money here or there. Part of it was them coming together with their political efforts,' Rossi said".²¹ According to another published story, "Rossi told The Associated Press that he called the county builders officials **simply to smooth over a dispute about political cooperation** between the King and Snohomish group and the statewide BIAW. **The schism included fundraising**".²² The record suggests that the dispute was about whether the MBA would give money to the war chest that BIAW was building to support Rossi's candidacy.

While the Board's decision was pending, Dino Rossi asked Doug Barnes, John Day and MBA Executive Director Sam Anderson to lunch.²³ On information and belief, at that lunch Dino Rossi discussed the pending solicitation for the BIAW's Rossi PAC.

The targets of Dino Rossi's contacts were Officers of MBA who *also* served as Officers and/or Board Members of the BIAW. For example, Joe Schwab sits on the Executive Committee of the BIAW. Therefore, through these contacts Dino Rossi assisted contributions from both MBA and BIAW to the BIAW's Rossi PAC.

¹⁹ MBA Chair Officers Minutes, May 21, 2007 (emphasis added).

²⁰ MBA Board Minutes, May 21, 2007.

²¹ http://seattlepi.nwsource.com/local/381295_rossi01.html

²² http://seattlepi.nwsource.com/local/6420ap_wa_rossi_builders.html

²³ MBA Chair Officers Minutes, June 18, 2007.

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Dino Rossi clearly knew about BIAW's illegal fundraising campaign and the progress thereof or he would not have been assisting in these solicitations. On information and belief, he was coordinating with BIAW Senior Officers in this fundraising campaign and was fully aware of its progress and proceeds. These officers controlled the BIAW's Rossi PAC. Thus, Dino Rossi coordinated with both BIAW and its Rossi PAC.

2. Dino Rossi attended the BIAW meeting at which the illegal contributions were received and discussed.

Evidence shows that the illegal contributions at the heart of the Attorney General action were transferred at or around BIAW's June 29, 2007, meeting at Semi-ah-Moo resort. MBA BIAW minutes from this meeting confirm that "The ROII MAF checks were distributed to each Local Association."²⁴ The Attorney General confirms that this political committee "received" the illegal contributions by subtracting them from these checks. Attorney General BIAW-MS Complaint ¶¶ 3.8.

President Daimon Doyle also reported on the illegal fundraising campaign at this meeting:

President Doyle - Gubernatorial Fundraising

Doyle mentioned that at BIAW's Board meeting in Spokane, a special fund was set up to raise funds for the 2008 gubernatorial races. At the Olympia meeting a plan was established. **President Doyle said so far 12 Local Associations had signed on to the plan and others were still in consideration. So far three-quarters of a million dollars had been raised. Add that to the amount of BIAW's excess and the total combined amount would come to over \$2 million dollars.** Daimon said clearly this is the one area where we will make a difference.²⁵ (emphasis added).

Dino Rossi gave the keynote address at this the meeting.²⁶ Immediately after Rossi spoke, Doyle presented results from a statewide poll testing a Gregoire-Rossi matchup.²⁷

Dino Rossi knew or should have known about BIAW's illegal fundraising campaign as a result of his participation at this meeting. In addition, his participation in this meeting constitutes encouragement and coordination with BIAW and its Rossi PAC.

²⁴ Board of Directors Meeting Minutes, Semi-ah-moo resort, June 29, 2007.

²⁵ Executive Committee Meeting Minutes, Semi-ah-moo resort, June 29, 2007. (emphasis added).

²⁶ Board of Directors Meeting Minutes, Semi-ah-moo resort, June 29, 2007.

²⁷ *Id.*

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B. DINO ROSSI VIOLATED STATE CAMPAIGN FINANCE LAWS

1. Rossi participated in BIAW's illegal fundraising and solicited and received over-limit contributions.

The facts show that Rossi participated in the illegal fundraising activities that are the subject of the Attorney General's complaint, and he should be made a party to that complaint for such participation.

In addition, due to Rossi's coordination, the BIAW and its political committees became ineligible to make "independent expenditure" in the 2008 governor's race, and their expenditures remained subject to contribution limits. RCW 42.17.640(2)(contribution limit). Thus, Rossi's conduct constitutes solicitation of contributions far in excess of those permitted by law.

The BIAW should know better, since on June 15, 2004, the Public Disclosure Commission issued an opinion to the BIAW that informed it that if a candidate helps fundraise for a political committee, the subsequent expenditures from that committee do not qualify as independent expenditures. Public Disclosure Commission, Advisory Memorandum on Independent Expenditures, June 15, 2004, adopted August 24, 2004.

Because of Rossi's coordination with the BIAW, its millions of dollars of expenditures are deemed to be over-limit contributions to the Dino Rossi campaign. Rossi violated the law by receiving such contributions. See RCW 42.17.570(1) ("An electioneering communication made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents is a contribution to the candidate."), RCW 42.17.640(14) ("No person may accept contributions that exceed the contribution limitations.").

Through the actions stated above, Rossi and the donors to the campaign fund violated the spirit and the letter of RCW 42.17.

2. Rossi Failed to Timely Register as a Candidate.

Dino Rossi's fundraising for a "Fund for Rossi," which was specifically designed to support his campaign for governor, qualified him as a candidate for the Governor's Office. He was deemed a candidate when he knew of and consented to the BIAW forming a political committee to promote his candidacy. See WAC 390-05-200(1); PDC Declaratory Order No. 8 (1992), (individual is deemed a "candidate" based upon "the existence of a political committee promoting the election of such individual for office with the knowledge and consent of that individual"). Rossi became a candidate in Spring of 2007 and failed to timely register and report.²⁸

²⁸ In PDC Case No. 08-004, the PDC found insufficient evidence to pursue the Democrats' claim that Rossi was a candidate before that date. However, the Democrats' claim was based upon different facts and in dismissing that claim the PDC was unaware of the facts presented herein.

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In addition, under RCW 42.17.020(9), a "candidate" is defined as an individual who "*receives contributions or makes expenditures or reserves space or facilities with intent to promote his or her candidacy for office*" "Contribution" is broadly defined under RCW 42.17.020(15) and includes pledges, transfers of funds between political committees, or anything of value. It also includes "*an expenditure made by a person in cooperation, consultation, or concern with, or at the request or suggestion of, a candidate, a political committee, or their agents*" *Id.* See also WAC 390-05-210 (An expenditure made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate ... is a contribution to such candidate.") "Expenditure" is defined sufficiently broadly to include BIAW or other groups or individuals' transfer or pledge to transfer funds to an account earmarked for the 2008 Governor's race. RCW 42.17.020(22).

Under these statutes, Dino Rossi should be deemed a candidate when he assisted BIAW to accumulate a "war chest" to support his run for governor. His participation in the fundraising for his race for governor is sufficient action to render him a candidate under RCW 42.17.

3. Rossi failed to timely report these contributions.

As of the date of this filing, Dino Rossi has not publicly disclosed the contributions and/or pledges he helped secure for the BIAW's 2008 campaign war chest or the spending from that fund, which constitute direct contributions to his campaign. The amassing of a multi-million dollar slush fund for use in the 2008 governor's race, especially under facts which disqualify them as an independent expenditure, must be publicly reported. These funds are already being spent on activities to support Rossi's candidacy, through the BIAW and/or its affiliated political committees.

4. Donors to the "war chest" have violated campaign finance limits.

Each donor to BIAW's political fund exceeding \$2,800 has made an over limit contribution and has therefore violated RCW 42.17.640. The PDC has already tracked the sources of these contributions in response to the Notifiers July 25, 2008, notice. At the conclusion of the statutory notice periods, Notifiers may bring suit against such donors if you have not done so.

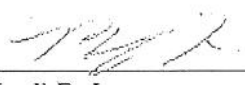
Notifiers intend to sue for all violations, including those yet to be uncovered and those committed subsequent to the date of this notice of intent to sue. Notifiers believe that this Notice sufficiently states grounds for filing suit. We intend, at the close of the notice periods, or shortly thereafter, to file a citizen's action against the above-named entities under RCW 42.17.400(4) for violations of the Public Disclosure Act, RCW Chapter 42.17. If you have any questions or concerns regarding this Notice, please contact the undersigned attorneys.

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Very Truly Yours,

SMITH & LOWNEY, P.L.L.C.

Law Offices of Michael Withey PLLC

By 
Knoll D. Lowney
2317 E. John St.
Seattle, WA 98122
(206) 860-8288

By /s/ Mike Withey
Mike Withey
601 Union Street, Two Union Square #4200
Seattle, Washington 98101
(206) 405-1800